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# OxyChem®

Michael A. James  
Assistant General Counsel

May 17, 1996

CERTIFIED MAIL # P 873 272 008  
RETURN RECEIPT REQUESTED

Mr. Frank Klanchar  
Region 3 (3HW22)  
U. S. Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, PA 19107

RE: Centre County Kepone Superfund Site, State College, PA

Dear Mr. Klanchar:

This letter responds to your "Special Notice" letter dated December 21, 1995, addressed to [Dr.] Ray I. Irani, Chairman of the Board of Occidental Chemical Corporation ("OxyChem") and received on March 19, 1996, under cover of a letter from Pamela Lazos, Senior Assistant Regional Counsel. It would be helpful if you would address any future correspondence to me or to Roger Hirl, the president of OxyChem, as Dr. Irani is chief officer of our parent company and is located in California.

OxyChem rejects the demand in your letter, and declines your invitation to participate by making a "good faith proposal." My letter, dated July 25, 1994, addressed to Ms. Mary Anne Daby, summarizes OxyChem's position with regard to our having any liability under CERCLA for any contamination resulting from Nease Chemical or Ruetgers-Nease Chemicals' operations at its plant in State College. My remarks in that letter distinguishing the plant site from the Centre County Site were, however, based on incorrect information; OxyChem has now become well-informed about the Site and recognizes that the Site includes the plant premises and some adjacent property. That correction does not alter our conclusion on the inapplicability of the statute, as further explained below.

OxyChem's predecessor company, Hooker Chemical, did not "arrange for" the disposal of hazardous substances resulting from Nease Chemical's production for Hooker of dechlorane (also known as "Mirex"). By the time Hooker and Nease entered into the production arrangement, Nease had ceased on-site disposal of wastes generated in its manufacturing operations, opting instead for off-site disposal. Waste management was not addressed in the Nease-Hooker contract, nor did any Hooker personnel visit the Nease plant or in any way attempt to manage production (except to insist that the Mirex meet the



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contract specifications) or post-production practices. Based on analysis of the EPA record, conversations with Ruetgers-Nease and our experience with industrial sites, OxyChem surmises that Mirex, Kepone, and any other chemicals associated with their production are present at the Site because of losses from production vessels, pipes, storage tanks or sumps during manufacturing operations that were exclusively under the control and management of Nease. Some or all of the solvents present may originate from facility losses or on-site disposal practices that predate or postdate the Nease-Hooker relationship at State College.

OxyChem does not agree with Region 3's assertion of an Aceto case analysis to OxyChem in the circumstances at this Site, and we believe that Aceto is based on overly-simplistic analysis. Further, we think that Aceto is not the law in the U.S. Circuit Court of Appeals for the Third Circuit. Aceto proceeds from the facile assumption that because production of a hazardous substance (waste) is an "integral" part of manufacturing a chemical, contracting for production of that chemical is equivalent to "arranging for" the disposal of that hazardous substance. The first part of this proposition generally is true; the second part is nonsense. The management of wastes generated by a chemical production activity involves a whole set of decisions and actions that are separate and distinct from the decisions and actions involved in making the product in the first place. Congress, when it enacted CERCLA, did not intend to fuse these separate management elements and turn the activity of arranging for the manufacture of a product into arranging for the disposal of wastes generated from that production activity. Evidence of control of the waste disposal decisions must be present to make a case of arranger liability; it may not simply be imputed. No evidence of such control, or even the power to control, exists where Hooker is concerned.

If you or your staff have any questions, please call me at 214/404-3966.

Sincerely,



Michael A. James

MAJ/pn

cc: Pamela Lazos, EPA Region 3

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